

IBLA 85-560

Decided June 22, 1987

Appeal of a decision of the Arizona State Office, Bureau of Land Management, declaring the Sundowner lode mining claim null and void ab initio. A MC 72440.

Affirmed.

1. Mining Claims: Special Acts -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Reclamation Withdrawals

It is proper to declare mining locations null and void ab initio where the locations were not perfected by performance of the condition precedent set forth in the order opening lands in a reclamation withdrawal to mineral location and entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1982).

APPEARANCES: Thomas L. Lee, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Thomas L. Lee appeals from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated April 8, 1985, declaring the Sundowner lode mining claim, A MC 72440, null and void ab initio. ^{1/} The claim is located in the SW 1/4 sec. 11, T. 1 N., R. 8 E., Gila and Salt River Meridian, Arizona. The notice of location was filed for recording with BLM on October 16, 1979, pursuant to section 314(b) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1744(b) (1982). The notice of location stated that the Sundowner mining claim was located on September 9, 1969, by one Thomas C. Tucker. In order to understand the basis for BLM's decision, a brief review of the history of the land embraced by the claim is in order.

^{1/} Lee, in his notice of appeal challenges BLM's decisions regarding two claims, the Sundowner claim and the Sundowner II, A MC 72441. BLM, in a decision dated Feb. 3, 1982, had declared the Sundowner II null and void ab initio because the claim was located on land withdrawn from entry by PLO 5070. Lee failed to file a timely appeal of that decision. Therefore, the Feb. 3, 1982, decision is final, and it is not subject to litigation in this proceeding. In any event, BLM properly held that a mining claim located on land withdrawn from location and entry is null and void ab initio. See Paul Vaillant, 90 IBLA 249 (1986).

On August 21, 1909, the land on which the subject mining claim was located was withdrawn from public entry under a first form reclamation withdrawal under section 3 of the Act of June 17, 1902, 32 Stat. 388. The withdrawal notice stated "these lands are required in connection with the erection and maintenance of a power transmission line on the Salt River Project". On September 16, 1939, the Secretary opened these lands to mineral entry pursuant to the Act of April 23, 1932, 43 U.S.C. § 154 (1982). That order provided, in part, that the lands were:

opened to location, entry, and patent under the general mining laws, subject to the terms of the following stipulation to be executed, acknowledged, and recorded in the county record, and in the United States land office by applicant, before any rights attach in his favor thereto, and subject to the regulations contained in circular No. 1275 issued under the act of April 23, 1932, the substance of which stipulation is to be incorporated in any mineral patent subsequently issued:

In carrying on the mining and milling operations contemplated hereunder applicant will, by means of substantial dikes or other adequate structure, confine all tailings, debris and harmful chemicals in such a manner that the same shall not be carried into Salt River bottom lands by storm waters or otherwise.

The lands involved herein, however, were again withdrawn from location and entry by an application for withdrawal A-4488 on December 30, 1969, and Public Land Order 5070 on June 10, 1971, 36 FR 11731 (June 18, 1971). In its April 8 decision, BLM declared the claim null and void ab initio because the public records showed no stipulation had been filed as required by the September 16, 1939, order.

On appeal, appellant states that on March 1, 1976, he purchased the Sundowner claim, which he asserts was originally located on March 16, 1949, for \$2,000 and has kept up annual assessment work of several hundred dollars per year. Appellant states "if these claims were considered useless at that time [March 16, 1949], why have the annual assessments been filed and recorded each year?"

[1] The September 16, 1939, order opening the lands to mineral location was issued under the authority of the Act of April 23, 1932, which authorized the Secretary, in his discretion, to open lands previously withdrawn for construction purposes under the Federal Reclamation laws, to location and patent under the general mining laws. That Act also provides that the Secretary:

may require the execution of a contract by the intending locator or entryman as a condition precedent to the vesting of any rights in him, when in the opinion of the Secretary same may be necessary for the protection of the irrigation interests. Such reservations or contract rights may be in favor of the United States or irrigation concerns cooperating or contracting with the United States

and operating in the vicinity of such lands. The Secretary may prescribe the form of such contract which shall be executed and acknowledged and recorded in the county records and United States local land office by any locator or entryman of such land before any rights in their favor attach thereto, and the locator or entryman executing such contract shall undertake such indemnifying covenants and shall grant such rights over such lands as in the opinion of the Secretary may be necessary for the protection of Federal or private irrigation in the vicinity. Notice of such reservation or of the necessity of executing such prescribed contract shall be filed in the Bureau of Land Management and in the appropriate local land office, and notations thereof shall be made upon the appropriate tract books, and any location or entry thereafter made upon or for such lands, and any patent therefore shall be subject to the terms of such contract and/or to such reserved ways, rights, or easements and such entry or patent shall contain a reference thereto.

The Secretary of the Interior may prescribe such rules and regulations as may be necessary to enable him to enforce the provisions of this section.
[Emphasis added.]

43 U.S.C. § 154 (1982).

BLM notes that its public records show no stipulation filed by Thomas L. Lee or his predecessors-in-interest for the Sundowner mining claim. Appellant offers no evidence to contradict this statement. It is well settled that when a location was not perfected by performance of a condition precedent set forth in the order opening the lands in a reclamation withdrawal to mineral entry pursuant to sec. 1 of the Act of April 23, 1932, 43 U.S.C. § 154 (1982), such mining claims are properly declared null and void ab initio. See Red Mountain Mining Co., 85 IBLA 23 (1985); Wayne M. Mann, 54 IBLA 8 (1981); Vearl Martin, 18 IBLA 234 (1974). Thus, BLM's decision herein must be affirmed. 2/

Appellant states "you have no right to take these claims without reimbursement of the money spent on them * * *." As BLM stated, the failure to record the stipulation rendered the claim null and void ab initio, meaning "null and void from the beginning." Therefore, the Department is not "taking" these claims, and the Department has no obligation to reimburse appellant for the money spent thereon. Moreover, since appellant was the party asserting an appropriative right on the public domain, it was his responsibility to apprise himself of the land status and act accordingly.

2/ While appellant asserts a location date for the Sundowner earlier in time than the location date recorded with BLM in 1979, he has failed to establish that such an earlier location occurred or that there is privity between this earlier location and the 1969 location. Tibbits v. BLM, 62 IBLA 124 (1982). Nor has appellant explained why he failed to record this location as required by sec. 314(b) of FLPMA. In any event, in the absence of any evidence that the condition precedent was fulfilled for this earlier claim, it, too, would be deemed null and void ab initio.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Gail M. Frazier
Administrative Judge.

